IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.546 OF 1986 WITH

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Shah Ghanshamdas Gopaldas & Ors. ...Appellants

Vs.

State of Maharashtra & Ors. ...Respondents

Ms Suhasini Mutalik for the Appellants
Ms Geeta Mulekar for Respondent Nos.1 and 2
Mr.R.G.Ketkar for Respondent No.3

CORAM: A.S.OKA, J.

DATED: JANUARY 20, 2005.

ORAL JUDGEMENT:

1. Both the Second Appeals were admitted on 18th September 1986. The Appellants in both the Appeals are unsuccessful Plaintiffs. Considering the facts and circumstances of the case, both the Appeals can be disposed of by a common Judgment.

2. The Appellants are claiming to be owners/tenants of certain immovable property. Proceedings were initiated by the Respondent Nos.1 and 2 at the instances of Respondent No.3 for acquisition of the suit property under the provisions of the Land Acquisition Act, 1894. The challenge in the suits

subject matter of both the Appeals is to the acquisition proceedings initiated by the Respondent Nos.1 and 2. The Trial Court dismissed the suits and the Appeals preferred by the original Plaintiffs have also been dismissed.

3. It is not in dispute that the challenge in the suits is to the acquisition proceedings initiated under a notification issued under the said Act of 1894.

4. The Apex Court in a Judgment reported in A.I.R. 1995 S.C. page No.1955 (State of Bihar Vs. Dhirendra Kumar and others) has held thus,

> "2A. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the land Acquisition Act was taken pursuant to the notice issued under S.9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent doman to serve the public purpose. The State is enjoined to comply with statutory requirements contained in S.4 and S.6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the

Act as amended by Act 68 of 1984. In publication of the notifications and declaration under S.6 , the public purpose gets crystalised and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11-A, now prescribes limitation to make the award within 2 years from the last date of publication envisaged under S.6 of the Act. In an appropriate case, where the Govt.needs possession of the land urgently, it would exercise the power under S.17(4) of the Act and dispense with the enquiry under S.5-A. Thereon, the State is entitled to issue notice to the parties under S.9 and on expiry of 15 days, the State is entitled to make immediate possession even before the award could be made. Otherwise, it would take possession after the award under S.12. Thus, it could be seen that the Act is a complete code in itself and it meant to serve public purpose. **We are, therefore, inclined to think as presently advised, that by necessary implication the power of the civil Court to take cognizance of the case under S.9 of C.P.C. stands excluded and a civil Court has no jurisdiction to go into the question of the**

validity or legality of the notification under S.4 and declaration under S.6, except by the High Court in a proceeding under Article 226 of Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial Court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction."

(emphasis supplied)

There is one more Judgment of the Apex Court reported in A.I.R. 1996 S.C. page No.523 (Laxmichand and others Vs. Gram Panchyat and others) in which Apex Court has held that the Civil Court has no jurisdiction to entertain and try a suit for challenging the acquisition proceedings initiated under the said Act of 1894. In view of this position, obviously the suits filed by the Appellants could not have been entertained by the Trial Court. Hence there is no merit in the Second Appeals.

4. At this stage, the learned Counsel for the Appellant states that the Appellant desires to adopt appropriate proceedings and therefore interim order which was operating during the pendency of the Appeals may be continued for a reasonable time. The said request is strongly opposed by the

learned Counsel appearing for the Respondents. Shri Ketkar, learned Counsel for the Respondent No.3 submitted that the land is acquired for road widening and therefore, interim relief should not be continued.

5. The view which I am taking is based on the Judgment of the Apex Court delivered in the year 1995 whereas the original suits were filed in the year 1978 and the Appeals in this Court were admitted in the year 1986. Considering all these facts, the request made by the learned Counsel for the Appellants deserves to be granted.

6. Hence, I pass the following order :

i) The Appeals preferred by the Appellants are dismissed with no order as to costs.

ii)It is made clear that the Appeals are dismissed only on the ground that the Civil Court has no jurisdiction to entertain and try the suits filed by the Appellants.

iii)For a period of eight weeks from today, the interim reliefs which were operating during the pendency of the Appeals will continue to operate.

Judge.